



FEB 23 2001

Paper No. 10

In re Application of
Joseph John Tebbe
Application No. 09/198,240
Filed: November 23, 1998
For: Clamping Jaw Device

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: DECISION ON
: RENEWED PETITION
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This is a decision on the renewed petition filed on January 30, 2001 by which petitioner again requests withdrawal of the examiner's holding that this application stands abandoned for failure to pay the Issue Fee.

Petitioner again asserts that the Notice of Allowance and attachments thereto were not in fact received. Petitioner has supported this allegation with a showing that is now deemed to comply with the requirements for a minimum showing pursuant to the Notice published at 1156 OG 53, as discussed in MPEP 711.03(c).

Petitioner has candidly discussed the fact that at a time relevant to the question of receipt of the Notice of Allowance, petitioner's correspondence address had changed from the original correspondence address of record, and that petitioner had inadvertently failed to notify the Office of that change with respect to this application. Petitioner points out, however, that the record in this application shows that the Notice of Allowance had in fact been returned to the Office as undeliverable. Therefore, it is clear that the Notice of Allowance was never received by petitioner.

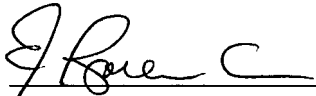
Office policy with respect to a change in correspondence address is set forth at MPEP 601.03. In general, the policy is that a change of address must be filed in each application affected thereby. The exception is when the correspondence address is designated as having been associated with a Customer Number. There is a discussion in MPEP 711.03(c) of the issue of the ramifications of the failure to properly file a change of correspondence address with respect to the filing of a petition to revive under 37 CFR 1.137. In particular, the mere inclusion of an address differing from the correspondence address of record as part of a paper filed in an application for a purpose other than changing the correspondence address, notification in a paper filed in one application of a plurality of applications affected by a change of correspondence address, and the lack of notification or belated notification of a change in correspondence address are all stated to not constitute proper notification of a change of correspondence address.

However, the decision in *Ex parte Gourtoff*, 1924 C.D. 153, 329 O.G. 536 (Comm'r Pat. 1924) holds that when another government agency informs the Office that Office correspondence was not delivered, then it cannot be held that the mere mailing of the undelivered correspondence constitutes adequate notice of that correspondence for purposes of starting the running of a statutory period for response. Under the facts of this particular application, where the Notice of Allowance was in fact returned to the Office as undeliverable, it appears that the decision in *Gourtoff* is controlling. Accordingly, solely on the facts of record, it is held that withdrawal of the holding of abandonment is proper in this application under *Delgar v. Schuyler*, 172 USPQ 513 (D.D.C. 1970) because the Notice of Allowance was not received by petitioner, and the Office

was so informed by the United States Postal Service.

Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. The application is being forwarded to the Head Supervisory Applications Examiner for Patent Examining Group 3720 for re-mailing a new Notice of Allowance, together with a complete copy of the Notice of Allowability and all attachments thereto. The period for payment of the Issue Fee will run THREE MONTHS from the date upon which the new Notice of Allowance is mailed, and cannot be extended pursuant to 37 CFR 1.136. The period for reply to certain requirements that may be set forth on the attached Notice of Allowability with respect to the submission of an oath or declaration, and with respect to certain requirements pertaining to the submission of formal drawings or drawing corrections, can no longer be extended. See 37 CFR 1.85(c), and 37 CFR 1.136(c) as amended, effective November 7, 2000, published at 65 Federal Register 54670 and 54674, respectively.

RENEWED PETITION GRANTED.



E. Rollins-Cross, Director, Patent
Examining Groups 3710 and 3720

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